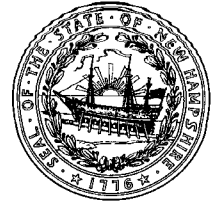




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

David Griffin
PO Box 395
Lochmere, NH 03252-0395

Re: River Road, Lochmere, NH
Wetland/Shoreland File #2006-1468

ADMINISTRATIVE ORDER
No. WD 06-041

August 30, 2006

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to David Griffin pursuant to RSA 482-A and pursuant to RSA 483-B. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.
2. David Griffin is an individual having a mailing address of PO Box 395, Lochmere, NH 03252.

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 483-B, the Comprehensive Shoreland Protection Act ("CSPA"), the Department of Environmental Services ("DES") regulates development activities in the protected shoreland zone established under the CSPA. Pursuant to RSA 483-B:17, the Commissioner of DES has adopted Env-Ws 1400 to implement this program.
2. Pursuant to RSA 483-B: 4 VII, "ground cover" means "any herbaceous plant which normally grows to a mature height of 4 feet or less."
3. Pursuant to RSA 483-B: 9V(a)(2)(A), not more than a maximum of 50 percent of the basal area of trees, and a maximum of 50 percent of the total number of saplings shall be removed for any purpose in a 20-year period. A healthy, well-distributed stand of trees, saplings, shrubs, ground cover, and their living, undamaged root systems shall be left in place.
4. Pursuant to RSA 482-A, DES regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A: 11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.

5. RSA 482-A:3, I, states that "[no] person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES]."
6. Pursuant to Env-Wt 101.06, "bank" means "the transitional slope immediately adjacent to the edge of a surface water body, the upper limit of which is usually defined by a break in slope."
7. Pursuant to Env-Wt 101.32, "dredge" means "to dig, excavate, or otherwise disturb the contour or integrity of sediments on the bank or bed of a wetland, surface water body, or other area within the department's jurisdiction."
8. Pursuant to Env-Wt 101.39, "fill" as a verb means "to place or deposit materials in or on a wetland, surface water body, bank or otherwise in or on an area within jurisdiction of department."
9. Pursuant to Env-Wt 101.28, "dock" as a noun means "a structure intended for securing of watercraft and/or to discharge and load passengers, freight, and other goods whether the structure is in the water or not."
10. Pursuant to Env-Wt 101.79, "seasonal dock or seasonal structure" means a "dock and any associated supports designed to be completely removed from the water during the non-boating season and includes pipe docks or floating docks."
11. The State of New Hampshire is the owner of land located on River Road in Lochmere, more particularly described on the Town of Tilton Tax Map R-10 as Lot 59 (the "Property"). Lochmere is a village of the Town of Tilton.
12. The DES Water Resources Council ("WRC") is the state agency charged with managing the Property.
13. On May 1, 2004, the WRC issued a license to David Griffin for a certain tract of land on the Property, situated between River Road and the normal full pond (NGVD Elevation 482.35) of the impoundment behind the Lochmere Dam and further identified as lot #7 & 8 on a plan entitled "Lochmere R.O.W. Locations," Scale 1" = 50', dated 8/17/92, on file with the WRC.
14. On June 29, 2006, DES received a complaint alleging un-permitted dredging and filling had occurred on the Property within 50 feet of Lake Winnisquam.
15. On June 29, 2006, DES personnel conducted a site inspection of the Property and documented the following:

a. Rip rap was placed along approximately 47 feet of the bank and bed of Winnisquam Lake on the Property.

b. A section of shoreline directly south of the rip rap area measuring approximately 33 feet long by 17 feet deep was devoid of vegetation. A retaining wall was constructed comprised of three sections measuring approximately 14 feet, 34 feet and 20 feet with no wall or erosion controls on the lakeward side.

c. A dock structure consisting of two wooden platforms and measuring approximately 6 feet by 30 feet, was located parallel to the of rip rap on Winnisquam Lake.

d. An area directly landward and adjacent to the rip rap, measuring approximately 34 feet by 47 feet was devoid of vegetation, with no erosion controls in place.

16. At the time of the inspection DES personnel requested that Mr. Griffin install appropriate erosion controls on the Property and submit photos via e-mail documenting that the erosion controls had been installed, by noon the following day.

17. On June 29, 2006, following the inspection, Mr. Griffin provided DES personnel with a partial copy of his Lochmere License issued by WRC, dated May 1, 2004, and a Department of Transportation Excavation Permit #03-2006-29, for the purpose of removing dead trees and stabilizing a 4 foot by 10 foot section of roadway embankment on Ridge Road.

18. DES has no record that photos documenting the installation of appropriate erosion controls were submitted by Mr. Griffin, as requested by DES staff during the June 29, 2006 inspection.

19. On July 5, 2006, DES personnel reviewed a videotape of the subject property, made November, 1993, by DES personnel. The videotape provided documentation of 6 trees that have since been removed from the lot. In addition, the videotape provided documentation of a single docking structure, located perpendicular to the shoreline. The alleged existence of rip rap along the shoreline on the Property in 1993, was not substantiated by the videotape.

20. DES has no record of a permit issued for the placement of rip rap along the shoreline or for the installation of a dock on the Property.

21. On July 24, 2006, DES personnel conducted another site inspection of the Property and documented the following:

a. Silt fence was not installed appropriately on the lot.

b. The docking structure located parallel to the shoreline was comprised of five (5) sections measuring approximately 6 feet 6 inches by 30 feet; 12 feet by 3 feet 10 inches; 10 feet by 7 feet; 11 feet by 3 feet 6 inches and 12 feet 6 inches by 6 feet 6 inches.

c. The exposed slope directly south of the rip rap section had been seeded, and grass was germinating.

22. At the time of the inspection, Mr. Griffin stated he added rocks along the shoreline directly south of the rip rap section to stabilize the shoreline in addition to the placement of silt fence. DES personnel informed Mr. Griffin that no additional rocks should have been placed in the bank or bed of the lake as a means of erosion control.

D. DETERMINATION OF VIOLATIONS

1. David Griffin has violated RSA 483-B:9V(a)(2)(A), I, by failing to maintain the natural woodland buffer on the shoreline of the Property.
2. David Griffin has violated RSA 482-A:3, I, by placing rip rap in the bed and bank of Winnisquam Lake without a permit from DES.
3. David Griffin has violated RSA 482-A:3, I, by excavating in the bank of Winnisquam Lake without a permit from DES.
4. David Griffin has violated RSA 482-A:3, I, by constructing and modifying a dock without a permit from DES.

E. ORDER

Based on the above findings, DES hereby orders David Griffin as follows:

1. **Immediately cease and desist** all activities on the Property, except as necessary to stabilize the Property pursuant to this Order. Provide DES photo documentation within 10 days from the date of this Administrative Order that you have properly stabilized the site.
2. **Within 10 days from the date of this Order**, completely remove all sections of the docking facility from Winnisquam Lake.
3. **Within 10 days from the date of this Order**, retain a certified wetland scientist to prepare a restoration plan and to supervise implementation and monitoring of the restoration in accordance with Item E. 4. below. Submit a letter of retention from the certified wetland scientist to DES documenting compliance with this provision of the Order.
4. **Within 30 days of the date of this Order**, submit a restoration plan to DES for review and approval. The restoration plan should include provisions for removal of rip rap and for restoration of a natural shoreline contour and natural vegetation along Winnisquam Lake. The following shall be submitted with the restoration plan:

- a. A plan with dimensions, drawn to scale, showing:
 1. existing conditions, with shoreline structures and the normal high water reference mark; and
 2. proposed conditions after reestablishing the jurisdictional areas;
 - b. A detailed description of the proposed means of erosion and sediment control and stabilization of the restoration area;
 - c. A detailed description of the proposed planting plan for the stabilization and revegetation of the restoration area.
 - d. A description of the proposed construction sequence and methods for accomplishing the restoration and the anticipated restoration compliance date.
5. **Implement** the restoration plan only after receiving written approval and as conditioned by DES, according to the approved schedule.
6. **Prior to installing any docking structure in or on Winnisquam Lake** obtain an approved permit from the DES Wetlands Bureau.

Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Jeffrey D. Blecharczyk, Shoreland Compliance Coordinator
DES Water Division
P.O. Box 95
Concord, NH 03302-0095
Fax: (603) 271-6588
e-mail: jblecharczyk@des.state.nh.us

F. APPEAL

Any person aggrieved by determination D.1 of this Order may appeal the Order to the New Hampshire Water Council in accordance with RSA 483-B:14 and NH Administrative Rules Env-WC 200. Such appeal must be filed with the Council within 30 days of the date of this Order and must be addressed to Chairman, Water Council, PO Box 95, Concord, NH 03302-0095. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>.

Any person aggrieved by determinations D.2 through D.4 of this Order may request DES to reconsider that determination within 20 days of the date of the Order. The request for

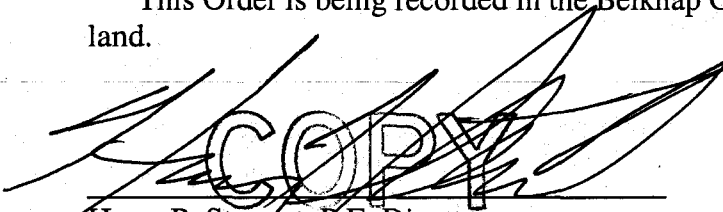
reconsideration must comply with Wt 203.01(d) (copy attached), and will be processed in accordance with Wt 203.01(e)-(j). Any party not satisfied with the decision on reconsideration may appeal to the Wetlands Council. Please note that under RSA 482-A:10, II, the Council may not consider any ground that is not set forth in the request for reconsideration.

Filing an appeal or request for reconsideration of the Order will not automatically relieve David Griffin of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 482-A and RSA 483-B provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. DES will continue to monitor Mr. Griffin's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Belknap County Registry of Deeds so as to run with the land.



Harry P. Stewart, P.E. Director
Water Division



Michael P. Nolin, Commissioner
Department of Environmental Services

Certified Mail: 7006 0100 0005 8153 5436

cc: Gretchen R. Hamel, Legal Unit Administrator
Public Information Officer, DES PIP Office
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Belknap County Registry of Deeds
Tilton Conservation Commission
Tilton Board of Selectmen
DES Water Resources Council